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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CRIMINAL PRODUCTIONS, INC., Plaintiff, vs. OSAMU MOTOBA, *et al.*,, Defendant	Civil Action No. 16-cv-1351RAJ Motion for Dismissal of Adam Winter (Doe 9)

Defendant, Adam Winter, moves for dismissal:

I. Response to Plaintiff's Amended Complaint

1. I, Adam Winter (Defendant), did not carry out any action alleged by Plaintiff. At the time of the alleged infringement, I was at work. I run a small business with only occasional, irregular, help from part-time employees. That is to say, the simple fact that my business was open at that time, necessitates that I was there. I provide rehearsal studios for musicians in the Seattle area. Many bands book individual sessions in these rooms (a "day rate") and those sessions start every evening at 6:00 p.m. It's located at 3651 E Marginal Way S. Seattle, WA 98134 (the Industrial District of south Seattle), which is a long drive from Lynnwood, WA (the alleged location of the infringement). It is a particularly long drive, temporally, at peak traffic hours, which is exactly when the alleged infringement took place. Because of this, I leave for work many hours earlier. On the date of the alleged infringement I had three different bands scheduled to start at 6:00 p.m. Suffice it to say, it would be impossible

for me to be at home at the time of the alleged infringement and be at my place of business when I was; when I had to be.

2. Furthermore, as part of my music business, I also serve as a DJ, professionally for weddings, and for fun. As such, I have spent many thousands of dollars acquiring a digital collection of music; by paying for it properly, not by illegal downloading it, and I have the receipts to prove it. I, also, have long-held a Netflix subscription, as well as an Amazon Prime subscription; both of which were held and standing at the time of the alleged infringement. All this is to say that I have a long record of paying for digital media. It would be laughable, if it weren't maddening, that the Plaintiff would assert some knowledge of my "tastes" (Dkt. #15, pg. 5, line 5).

3. Plaintiff also claims (Dkt. #15, pg. 5, par. 14) that some kind of due diligence was taken regarding my place of residence. I would assert that this is a complete lie. Had Plaintiff done so, it would have been apparent that I live in a condo, which shares walls with other condos on all sides, and a grocery store parking lot adjacent.

4. At the time of the alleged infringement I had a subscription, through Comcast, for TV and internet. The internet connection was 100Mbps. This is an extremely fast internet connection. That is, it's much, much more bandwidth than any single residency would every need. I also had my own long-range wireless router connected to the Comcast modem, so that I could connect to that internet connection from anywhere within the building (outside my own residence). Since then, I have cancelled all services with Comcast and removed all wireless routers from my residence. For my personal internet connection at home, I now tether my computer to my phone.

II. Additional Considerations

1. I would like the court(s) to be aware (see attached documents) of a large number of declarations made, on behalf of Plaintiff, by a fictitious person. "Seems everybody but the United States District Court, the United states Attorney, and the Washington State Bar Association knows about the prolific use of this fictitious witness to trick Judge Lasnik." (pg. 4, par. 2).

Respectfully submitted this 12th of April, 2017

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January 25, 2017

David A. Lowe
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Re: Criminal Productions, Inc. v. Motoda, WD WA Case No. 2:16-cv-1351

Dear Mr. Lowe:

This law firm represents Osamu Motoda with respect to the federal lawsuit your law firm has filed against him and personally served on him. Note the correct spelling of Mr. Motoda's name with a "d" and not a "b" as in the court papers.

We reference our earlier letters regarding Jasmin Teodoro, Patricia Alexander, Larry Lewis, James Collins, and Jaime Alacorn regarding LHF Productions and Cell Film Holdings. All the defenses we raised in those letters apply equally to Mr. Motoda.

Mr. Motoda is wholly innocent. He lives with his girlfriend in a townhome they jointly own in Renton. They have no children. The townhome has shared walls. Mr. Motoda has not used Bittorrent. Prior to being accused in this lawsuit, Mr. Motoda had never heard of your client's film and he has no interest in it. If he did have any interest in it, he could have rented it for no marginal cost using their Amazon Prime account.

Mr. Motoda and his girlfriend were at a wedding on Saturday August 20, 2016 at 5:08 pm pacific time when your client's foreign investigator entrapped its blip. The wedding started at 1 pm at Seattle University and the reception was at the Renton Community Center where they were until after dark that evening. There are photographs of Mr. Motoda and his girlfriend at the reception at the time of the entrapped blip. I have seen one of these photographs and they look very happy. But no one is happy to be named and served in a federal court lawsuit for which they have absolutely no liability. Your client's representatives' recklessness affects people.

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Mr. Motoda was personally served on January 10, 2017. His Answer is due next Tuesday January 31, 2017.

We respectfully request that Criminal Productions voluntarily dismiss Mr. Motoda from the case. If he is dismissed by Noon on Tuesday January 31, 2017, we will not Answer the Amended Complaint, and we will not seek defense attorneys' fees or costs. If the case is not dismissed by Noon Tuesday January 31, 2017, we will Answer during the afternoon of January 31, 2017 and we will seek defense attorneys' fees when Mr. Motoda wins, which is a certainty given his innocence.

Perhaps you have seen the Ninth Circuit's ruling this week in *Perfect 10 v. Giganews,* Case No. 15-55500. Judge Nelson writes a clear and thoughtful opinion directly addressing the same three copyright theories your clients continue to plead in these Bittorrent cases. The Ninth Circuit found that the accused defendants (i) had no liability for direct infringement, (ii) had no liability for contributory infringement (via material contribution or inducement), and (iii) had no liability for vicarious infringement – even though the defendants were operating commercial enterprises through which bits of the plaintiff's copyrighted works passed.

Our favorite part is the Ninth Circuit affirming the defense attorneys' fee award of $5,213,117.06 and the non-taxable costs of $424,235.47. This is a solid recognition by our governing circuit that misguided copyright bullies are taking a significant risk pursuing unwinnable copyright claims (even if "clever" arguments can be made in an attempt to articulate liability.) Judge Nelson quotes the Supreme Court in affirming the fee award: "It is peculiarly important that the boundaries of copyright law be demarcated as clearly as possible. To that end, defendants who seek to advance a variety of meritorious copyright defenses should be encouraged to litigate them" (at p.32).

If Mr. Motoda is not dismissed, we intend to advance a variety of meritorious copyright defenses. We will track our time on each task undertaken for each defense and we will present our fee application to the Court when Mr. Motoda prevails, which is a certainty given his innocence.

Is it proper to trick a court into issuing a subpoena with allegations that an "IP address was observed infringing Plaintiff's motion picture?" Dkt. # 15. Maybe the Ninth Circuit will rule shortly in *Naruto v. Slater*, Case No. 16-15469, that a monkey can own a copyright, but we are unaware of any pending cases where an arbitrary number can infringe one.

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Is it proper to trick a court into issuing a subpoena with allegations that an "IP address was observed infringing Plaintiff's motion picture" when no human was involved in the "observing?"

Is it proper to trick a court into issuing a subpoena based on the declaration of a person who does not have the personal knowledge or background he claims to have? These WD WA Criminal Productions cases filed by your firm started with declarations of Daniel Macek. Your firm has filed numerous declarations of Mr. Macek, including in the *Dallas Buyers Club* cases identified as related to this case in Dkt. #2. In those declarations, Mr. Macek claims to have been working for "Crystal Bay Corporation of South Dakota in its technical department." We have previously pointed out that fictitious declarant "Darren M. Griffin" filed over 40 declarations in WD WA also claiming to have been working for "Crystal Bay Corporation of South Dakota in its technical department."

We have investigated Crystal Bay Corporation of South Dakota. It has no "technical department," and it never did. It was never in a position to hire German nationals like Mr. Macek or fictitious people like "Darren M. Griffin." It was never in compliance with South Dakota corporate law regarding its home office address that it never occupied and regarding the corporate executives identified to the South Dakota authorities whom we have concluded are also fictitious.

We have addressed the 40+ declarations filed in WD WA by your client's foreign representatives of fictitious declarant "Darren M. Griffin." We thought it was brazen for your client's representatives to submit a declaration to our revered federal courts including a statement that a fictitious declarant has "nine years of experience working in the field. I have a degree in computer science." Case No. 2:13-cv-455, Dkt. # 5-1. This week we came to realize that your client's foreign representatives also filed numerous second declarations of fictitious declarant "Darren M. Griffin" one month later claiming: "I work for Crystal Bay Corporation CBC, 'Crystal Bay' a company incorporated in South Dakota with its principal address at 110 E. Center Street, Suite 2013 Madison, South Dakota 57042. Crystal Bay is a provider of online anti-piracy services for the motion picture industry. Before my employment with Crystal Bay, I held various positions at companies that developed software technologies. I have approximately ten years of experience related to digital media and computer technology." *Id.* Dkt. # 9-4.

These second declarations go on to give more information "based on my personal knowledge" in order to persuade Judge Lasnik to grant a subpoena, since Judge Lasnik had been skeptical of the first declarations. Neither attorney Symmes, nor your client's representatives, ever informed Judge Lasnik that his skepticism was well founded, since "Darren M. Griffin" is fictitious.

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From what we can tell, over 35 of these second "Darren M. Griffin" declarations (i.e. the ones claiming to "work for" CBC and to have "ten years experience") were submitted to Judge Lasnik to overcome Judge Lasnik's objections to the first "Darren M. Griffin" declarations (i.e. the ones claiming to be a "consultant for CBC with nine years experience" and to "have a degree in computer science.")

Seems everybody but the United States District Court, the United States Attorney, and the Washington State Bar Association knows about the prolific use of this fictitious witness to trick Judge Lasnik. Consequently, your client's representatives moved onto identical declarations for Mr. Macek at Crystal Bay Corporation (e.g. the *Dallas Buyers Club* cases you admit are related to this one in Dkt. #2), and then to identical declarations from Mr. Macek at Maverickeye (e.g. this same plaintiff in Case No. 2:16-cv-729), and then to identical declarations from Mr. Arheidt at Maverickeye (e.g. in this case).

Mr. Arheidt has claimed an IDENTICAL "technical" background to the fictitious witness "Darren M. Griffin" used to trick Judge Lasnik (i.e. the "second" form of Declaration). And that claimed technical background is IDENTICAL to that claimed by Patrick Achache, an acknowledged executive of Guardaley.

We see the relationship of Mr. Achache and Guardaley to AMPC and New Alchemy Limited of the Philippines. Here is a link to Mr. Achache's LinkedIn page claiming to be CEO of New Alchemy of the Philippines:
https://www.linkedin.com/in/patrick-achache-6b626b19?trk=extra_biz_connect_hb_upphoto
Here is a link to the Elance.com freelance employment site advertising for a freelance position using "Guardaley," "APMC," and "New Alchemy Limited":
https://www.elance.com/samples/guardaley/125541963/

Recall the APMC "playbook" I discovered in the Elf-man case that seems to still be in operation. https://prezi.com/b_f7djco81ri/copy-of-themanako123/ This presentation is fascinating because it begs the question who the "real party in interest" is in these cases. Some districts require identification of "all parties" with a financial stake in the matter, and our review for Criminal Productions does not reveal disclosure of any parties other than the plaintiff and its parent corporation. But this presentation makes it pretty clear that the investigator has a stake. Ms. VanderMay's odd withdrawal from the Elf-Man and Thompsons Film cases blaming an ethical conflict with the "plaintiff's representatives" is consistent with this stake. Last week you wrote to an innocent defendant in this case: "We have been instructed to withdraw this offer after today, and to proceed with prosecution of the case." If we conducted discovery on this instruction, would

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we find it came from Criminal Productions, or some other party? We guess the latter. We are confident the APMC playbook is still in effect. For example, Google Analytics shows that the "longest" views of my personal biography page on LeeHayes.com come from The Philippines and Germany, places where I have no clients or prospective clients.

Another meritorious defense we will pursue relates to the copyright registration at issue in the case. Some of the Criminal Productions cases are based on U.S. Copyright Registration PAu-3-7772-954, but this case against Mr. Motoda is based on U.S. Copyright Registration PA-1-984-029. The '029 Registration includes "material excluded from this claim" (identifying the excluded material). Will Mr. Arheidt (or Mr. Patzer) be able to testify that the imperceptible blip he "observed" is, or is not, excluded from the copyright registration in suit? In Elf-man, Mr. Patzer was not able to identify whether the entrapped blip was, or was not, part of the excluded material from the registration – perhaps because the blip is imperceptible, but more importantly perhaps because the associated metadata makes such an identification impossible.

Plus, we see the '029 Registration is signed by "Michael A. Hierl." Our records show that Mr. Hierl had his law licensed temporarily suspended in Illinois and at the United States Patent and Trademark Office. Mr. Hierl appears to have been the most prolific filer of declarations from fictitious declarant "Darren M. Griffin," with over fifty such filings in ND IL. We see Mr. Hierl is attorney of record for Criminal Productions in ND IL. So, he is the copyright filer, and the plaintiff's attorney, and he filed over fifty declarations of a fictitious declarant to trick judges in the ND IL. We see a meritorious copyright defense in challenging Mr. Hierl's credibility.

Other meritorious copyright defenses surround whether your client will never be able to admit its entrapped blip data or its typed up chart of alleged infringement into evidence. First, we doubt if it would be cost effective to fly the proper technical people to Seattle to lay a proper foundation for the electronic evidence. But even if those obstacles are overcome, we understand from Mr. Fieser's testimony that the typed up charts of alleged infringement are not direct reports from the blip entrapping software, but are prepared by the respective attorneys. This explains why the typed up charts of alleged infringement differ in formatting in each district. These are not hallmarks of admissibility of computer evidence.

We could go on, but you get the point. Your client will never have admissible evidence sufficient to prove Mr. Motoda is liable for copyright infringement. Mr. Motoda is innocent and is 100% certain to prevail at trial. We are prepared to litigate and conduct full discovery. We will present a variety of meritorious copyright defenses, following the policies of the U.S. Supreme Court and the Ninth Circuit to support our claim for defense attorneys' fees.

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Please consider our offer to not Answer, nor pursue defense attorneys' fees, if the case against Mr. Motoda is dismissed by Noon, Tuesday January 31, 2017. Otherwise, we will submit our Answer that afternoon and patiently work towards Mr. Motoda's full exoneration and the ruling on our request for defense attorneys' fees.

Thank you for your consideration of our position.

Very truly yours,

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c: Mr. Motoda
Kyle D. Nelson, Esq.
Zachary Haveman, Esq.

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CRIMINAL PRODUCTIONS, INC., Plaintiff, v. OSAMU MOTOBA, an individual; SARAH LARSON, an individual; OLASUNKANMI OLADEJI, an individual; ADAM WINTER, an individual; DARYL HAM, an individual; DAVE CUMMINS, an individual; and LIAM MCDONALD, an individual, Defendants.	Civil Action No. 16-cv-1351RAJ VOLUNTARY DISMISSAL OF OSAMU MOTOBA (DOE 1) AND OLASUNKANMI OLADEJI (DOE 6)

The Internet Service Provider was unable to provide subscriber identification information in response to the subpoena issued pursuant to the Court's Order Granting Expedited Discovery or Plaintiff has otherwise been unable to identify the responsible party via the subscriber identification provided by the Internet Service Provider. Accordingly, pursuant to Rule 41(a)(1)(A)(i), Plaintiff hereby dismisses its claims against the noted Defendant(s) without prejudice.

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